

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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:
UNITED STATES OF AMERICA : Criminal Action No.:
: 1:23-cr-156
:
v. :
:
DANIEL MARC LOFARO, : October 11, 2023
:
Defendant. :
-----x

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE LINDSEY R. VAALA,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

A P P E A R A N C E S

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(Proceedings recorded by electronic sound recording transcript
produced by computerized transcription.)

OFFICIAL U.S. COURT REPORTER: MS. TONIA M. HARRIS, RPR
United States District Court
401 Courthouse Square
Tenth Floor
Alexandria, VA 22314

P R O C E E D I N G S

(Court proceedings commenced at 2:10 p.m.)

THE COURTROOM CLERK: The United States of America
versus Daniel Mark Lofaro. Case No. 23-cr-156.

MS. HALPER: Good afternoon, Your Honor. Lauren
Halper on behalf of the United States.

THE COURT: Good afternoon, Ms. Halper.

MR. SALVATO: Good afternoon, Your Honor. Frank
Salvato and Michael Sprano for Mr. Lofaro, who is present.

THE COURT: Okay. Good afternoon. Good afternoon,
Mr. Lofaro.

All right. I have this down for a detention
hearing, first of all. I understand Judge Fitzpatrick on
Friday issued a temporary release order so that Mr. Lofaro
could attend the funeral of a family member and set the
detention hearing today.

MR. SALVATO: That's correct, Your Honor. If I
could proffer a few facts that came out in front of Judge
Fitzpatrick and give a little more depth to what Judge
Fitzpatrick did, I think that would be helpful.

THE COURT: Okay.

MR. SALVATO: I would have a proffer as to a few
facts.

THE COURT: Okay.

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1 MR. SALVATO: In the case and kind of what happened
2 in front of Judge Fitzpatrick.

3 THE COURT: Okay. And I'm sure Ms. Halper will also
4 have a proffer of her own.

5 MS. HALPER: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. SALVATO: Thank you, Your Honor.

8 THE COURT: Sure.

9 MR. SALVATO: Your Honor, the end of May 2022, law
10 enforcement effectuated a search on Mr. Lofaro's residence.
11 Mr. Lofaro reached out to Mr. Sprano and myself late May,
12 early June of 2022 to retain us regarding this particular
13 investigation. I can tell the Court that on June 22, 2022, I
14 did reach out to the government through the case agent as well
15 as the prosecutor indicating that we had been retained in the
16 case and if there was anything to discuss, reverse proffer or
17 any insight on the case, to please let us know at that time.
18 After that initial communication between ourselves and law
19 enforcement, the -- there was a second search effectuated at
20 Mr. Lofaro's residence. After that second search, obviously,
21 Lofaro, myself, and Mr. Sprano had been in contact over these
22 past 15 months or so.

23 I can tell the Court that on Thursday evening,
24 October 5th, then spilling into Friday morning, October 6th,
25 we were informed that an indictment had been returned against

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1 Mr. Lofaro. There had really been no communication from the
2 government back to us regarding the situation and the
3 underlying investigation.

4 Mr. Lofaro has presented to Judge Fitzpatrick his
5 dad had actually passed away a couple days previously. The
6 government indicated on Friday morning that if he wanted to
7 self-surrender he needed to do that by 12 noon. I can tell
8 the Court that Mr. Lofaro was actually on his way to
9 Pennsylvania for his father's funeral at that time. I can
10 also tell the Court, by way of proffer, his family is here,
11 his wife, his mom, and his sister. His mom and his sister
12 both live in Pennsylvania, and they were all present at the
13 funeral.

14 After some back and forth with Judge Fitzpatrick,
15 and I think the government elicited some proffer facts about
16 some of the chats in this case and whatnot, Judge Fitzpatrick
17 decided to let him out, basically with the strict admonition,
18 that you should hopefully, you know, abide by these temporary
19 conditions of release. I can tell the Court, by the way of
20 proffer, that Mr. Lofaro gave his passport to Mr. Sprano that
21 day. There was also a couple of firearms in the house. They
22 were also given to Mr. Sprano, and he has locked them up in
23 his personal safe.

24 I can further proffer to the Court that Mr. Lofaro
25 did travel to Pennsylvania with his wife, who is present.

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1 They did attend the services, and he stayed with his mom the
2 entire time. He had his GPS monitor on. There was no issues,
3 according to the pretrial report. Mr. Lofaro was instructed
4 to return, not to his residence, but simply to court today at
5 1:30. He did meet us outside. We talked to him and his
6 family, and that's what brings us here. So it's a little bit
7 of a strange procedural background, but that's the proffer, in
8 terms of the investigation, the contact, his retaining
9 counsel, and also him going to his father's funeral.

10 I do, obviously, have an argument based upon the
11 pretrial report, but I think it was important to proffer those
12 facts in terms of kind of procedurally where we got today.

13 THE COURT: Thank you. That is helpful. I knew
14 some of that, but having the extra detail was helpful since
15 I'm playing catchup a little bit.

16 All right. Ms. Halper, happy to hear from you on
17 detention.

18 MS. HALPER: Yes. Thank you, Your Honor. Your
19 Honor, I would like to start by proffering some of the facts
20 in this case. I have handed to both defense counsel a small
21 set of exhibits, which I would also like to pass up to Your
22 Honor. First, I'd like to -- through the assistance of your
23 court security officer, if there's no objection.

24 THE COURT: Yes. Thank you.

25 MS. HALPER: Your Honor, I'd first like to sketch

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1 out a little bit of the history of the case, and then I would
2 like to briefly go in depth about some of these exhibits.

3 I'll also just say, Your Honor, for the record, for
4 clarity, that is correct that the government reached out
5 Thursday of last week to make contact with defense counsel.
6 The government didn't hear back that evening, and so, Friday
7 morning the government reached out via email, let defense
8 counsel know that there had, in fact, been an indictment, and
9 that Mr. Lofaro should self-surrender by noon if he did not
10 want to be arrested on the warrant that was issued along with
11 the indictment. The government, at that point, did not know
12 that Mr. Lofaro's father had passed away and that he was en
13 route to a funeral. So I just want that to be clear.

14 Your Honor, this case began really in November of
15 2021. That was the time when the FBI in Ohio was
16 investigating a separate target there in connection with the
17 trafficking of child sexual abuse material. The FBI in Ohio
18 did a search warrant on the home and electronic devices of
19 their subject there and discovered, upon review of that
20 subject's electronic devices, that that person had been
21 engaged in chats via Kik, which is a social media application
22 and messaging application, that also enables users to trade
23 media files. The subject there had been in touch with the
24 user, who through investigation, they learned was, in fact,
25 the defendant, Mr. Lofaro. And that in at least one chat with

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1 Mr. Lofaro, the subject in Ohio had sent Mr. Lofaro child
2 sexual abuse material at his request.

3 If you look at the packet of exhibits, Your Honor,
4 in front of you, Government's Exhibit 1 is that chat with the
5 subject in Ohio. Your Honor can see that there are several
6 columns here in this exhibit, and I apologize. This is
7 printed very, very small. But the column on the left is the
8 display name of the participant, the message sender is, of
9 course, the sender of the message. All messages sent by
10 Seagull Dupad (ph), which is the display name for Mr. Lofaro
11 on the Kik social media application, all of his messages that
12 he sent are shaded in blue. That is going to be the case for
13 all of the exhibits here in front of Your Honor.

14 You can see that these Kik chats occurred on
15 October 20th of 2021 into the next day. And if you look at
16 the time stamp for the chat sent by the Ohio subject, 23:27,
17 it shows "You added the subject from a group you were in
18 together, NN Cuties." Law enforcement would tell Your Honor
19 that "NN" stands for, in the child exploitation world, "nearly
20 nude" or "not nude."

21 And then you can see in response on the user account
22 that belongs to Mr. Lofaro responded, "Love what you just
23 posted. Do you have any a bit more revealing?" The subject
24 responds, "I might." Lofaro responds, "There are media
25 attachments sent." You can see all the way in the right-hand

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1 column the messages that include a media attachment. Lofaro
2 responds, "Oh, very nice. And then after two more attachments
3 he says, "Any penetration?"

4 And then there is a message sent by the Ohio subject
5 at 3:30. That is a media attachment that is bolded in red.
6 That is -- this is true for the -- any subsequent exhibit that
7 the media attachment's bolded in red are attachments that have
8 been reviewed by law enforcement and determined to depict
9 child pornography or child sexual abuse material. That file
10 in particular, Your Honor, law enforcement would say depicts
11 two prepubescent minors engaged in sexually explicit conduct.

12 So, Your Honor, that this chat and that Ohio
13 investigation by the FBI was the jumping off point of the
14 instant investigation in the case against Mr. Lofaro.

15 THE COURT: So unless it's bolded in red, the media
16 attachments have not been determined to be child pornography?

17 MS. HALPER: Correct.

18 THE COURT: Okay.

19 MS. HALPER: Those attachments were reviewed and do
20 not depict things that qualify under the federal definition of
21 child pornography.

22 THE COURT: Okay.

23 MS. HALPER: I will tell Your Honor that -- so after
24 that information was obtained by FBI in Ohio, it was -- there
25 was, obviously, some subsequent law enforcement investigation

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1 into the identity of this user through subpoenas. They were
2 able to identify him, the user of this account, as Mr. Lofaro.
3 The IP logs attached to this Kik account show that there were
4 IP log-ins that traced back to Mr. Lofaro's residence to an IP
5 that is registered with his name at his residence in Fairfax
6 County.

7 THE COURT: I'm sorry. When did you make that
8 determination?

9 MS. HALPER: That was done roughly at the end of
10 2021, the investigation into the identity of the user.

11 THE COURT: Okay.

12 MS. HALPER: Then, Your Honor, as defense counsel
13 noted in 2022 -- pulling up the date for you specifically --
14 May 18th of 2022, there was a search warrant at Mr. Lofaro's
15 residence in Fairfax County.

16 On that date, FBI and NCIS, who became attached to
17 this case, Your Honor, because of the defendant's employment
18 with the Naval Research Laboratory as a civilian, NCIS was
19 then made part of the case. So law enforcement collectively
20 took 300 electronic devices from Mr. Lofaro's residence, or
21 roughly, I'll say approximately 300 electronic devices. One
22 of the electronic devices that was taken that day was an
23 iPhone 12 mini that was taken directly from Mr. Lofaro's
24 person.

25 Much of the evidence in this case, Your Honor, came

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1 directly off of that iPhone 12 mini that was taken from Mr.
2 Lofaro. Namely, and I think most relevant to today's
3 proceeding, the phone was forensically examined, and it was
4 found to contain a repository of Kik chats in a database
5 associated with the application. As well as media attachments
6 that matched the attachments sent and received through the
7 chats in another folder associated with Kik.

8 These chats that were -- that were found on the
9 phone were dated approximately February of 2021 to May of
10 2022. Upon review of those chats, there were numerous
11 instances, more than 15 days -- 15 or 16, roughly, discrete
12 days in that time frame when child sexual abuse material was
13 traded, both distributed and received. And in fact, on more
14 than one of those discrete instances or days, when it was
15 traded, there were many files traded by Mr. Lofaro,
16 distributed by him, received by him.

17 There was, for example, one day, in particular, or
18 two days, actually, in particular, in February of 2022, when
19 there were more than -- there was 45 files one day and 46
20 files the next day, child pornography files that were traded
21 back and forth between Mr. Lofaro and other users. Review of
22 those chats, Your Honor, shows that Mr. Lofaro was in many
23 different Kik groups. Kik groups are formed oftentimes to
24 target or create a forum for members who are interested in the
25 same types of content.

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1 Mr. Lofaro was in groups, for example the NN Cuties
2 group. Other groups that were -- had "incest" in the title.
3 If you look, Your Honor, at Exhibit 6, this was one of the Kik
4 chats that was found on Mr. Lofaro's phone. Again, you can
5 see the participant there all the way to the left, and his
6 messages are shaded in blue. You can see at the top that this
7 user was added to this message from a group #IncestWeTrust.
8 And Mr. Lofaro, this is in August 13 of '21, says "S2R." Law
9 enforcement would tell Your Honor that "S2R" is shorthand
10 often used in the child exploitation context to mean send to
11 receive. It's trading lingo.

12 And then Mr. Lofaro says, "Incest and family BTW."
13 The other user responds, "I've got very young incest." And
14 Mr. Lofaro says, "I like that, I have some of that nature."

15 In addition, Your Honor, there were other chats
16 uncovered in the review of the device. And these exhibits,
17 Your Honor, these are excerpts. Many of these chats went on
18 for a substantial period of time. The way that the forensics
19 uncovered these chats, there were private messages sort of
20 embedded, if you will, in larger group chats. So it all
21 appears on an Excel spreadsheet with just a running chat log,
22 and you know, you can see the dates, but there is group chats
23 and private messages mixed in. So these are excerpts from
24 that log, Your Honor.

25 THE COURT: And again, this is all from the iPhone

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1 that was seized on -- in May of 2022?

2 MS. HALPER: That's correct, Your Honor.

3 THE COURT: Okay.

4 MS. HALPER: And then in looking at Exhibit 2, which
5 should be the next exhibit in the packet, this, again, is
6 another Kik chat. This is from December of 2021. This sort
7 of just generally is a discussion between Mr. Lofaro and
8 another user about this other user's opportunities of abusing
9 sexual -- of sexually abusing children in real life in foreign
10 countries. In particular, they talk about this other user's
11 sexual abuse of children, particularly 6- and 7-year olds in
12 Thailand. And you can see in this chat, Your Honor, Mr.
13 Lofaro says things like, at 8:07, "I heard that in Thailand
14 there are places where you can play with a mom and their
15 little one. Have you ever been to anything like that?" The
16 user responds, "LOL. You can sneak in touches because they
17 are innocent and don't know."

18 Going down a little further, Mr. Lofaro says, "You
19 ever take pics?" Then down -- and then the user says, "Can't
20 get caught." Mr. Lofaro responds, "Makes sense. Have you
21 ever played with their pussy?" The other user responds, "The
22 6- and 7-year olds, you can put your hand between their legs."
23 Et cetera. You see it in front of you. And then finally, at
24 the end, Mr. Lofaro says, "Now I want to go to Thailand."

25 Exhibit 7, Your Honor, which is the next one in your

1 packet, again, this is another excerpt from the Kik chats.
2 This excerpt comes from a chat on June of 2021 between
3 Mr. Lofaro and another user. In this chat, Mr. Lofaro and
4 this other user discuss the other user having seen his minor
5 daughter engaged in sexual activity. Mr. Lofaro goes on to
6 talk about, he says at 5:02, "Hypothetically, one of my
7 friends has a daughter that gets-together with me and another
8 family that we are friends with from time to time. One time
9 my one friend's son and my other friend's daughter hit it off
10 and were playing with each other in the pool." He goes on to
11 talk about having hypothetically watched that. And then asks
12 this other user, "You have pics of your daughter?" And they
13 talk about trading, Your Honor, and then you can see that
14 Mr. Lofaro asked for these pics and then indicates that he
15 doesn't trade in this account and wants to turn on another
16 device in order to effectuate that trade.

17 I'll also tell, Your Honor, that law enforcement's
18 review of these Kik chats also uncovered multiple chats in
19 which Mr. Lofaro talks about having fantasies of sexually
20 abusing a fictional 9-year old daughter. Of course, to the
21 government's knowledge, he doesn't have children, but that is
22 something that's discussed. There is also a number of chats
23 that were uncovered in the examination that talk about
24 Mr. Lofaro's having essentially cleared his contraband. He
25 calls it "purging." That's what Exhibit 3 in this packet

1 shows, Your Honor. There are two different sets of chats
2 here. There's a set, at the very top, from February 4th where
3 Mr. Lofaro tells another user that he did a purge, "But I'll
4 send you some when I get them back, need to keep things clean
5 just in case."

6 And then, you can see below that a set of chats from
7 February 5th of 2022, where he's talking to a couple different
8 users here, and talking about touching, mentioning that he's
9 done this purge. You can see that one of the users at 3:22
10 sends him a file that's been reviewed that depicts child
11 pornography. He responds, "That is hot. So how did you get
12 to touch?" And then they go in -- on to talk about this other
13 user's niece who he says, the other user says, that he touches
14 while she sleeps and that she's 12. Mr. Lofaro says, "Good
15 age, and she did not wake up?" Because he talks about
16 touching her when she's asleep.

17 That's -- it's a lengthy chat, Your Honor. I
18 included that because it has these references to purging and
19 it has further references to interest in the sexual abuse of
20 children in real life in addition to the trading of this child
21 sexual abuse material.

22 THE COURT: Okay.

23 MS. HALPER: Your Honor, the next exhibit, which is
24 5, this is from August 18th of 2021. Again, another Kik chat
25 between Mr. Lofaro and another user, wherein he, again, talks

1 about not having anything to trade due to a recent purge.

2 This user had said that he was mainly interested in young and
3 or incest, and Mr. Lofaro responds, "Okay. I removed all of
4 those the other day." Your Honor, those exhibits that I just
5 talked about were, again, those were the Kik chats from the
6 iPhone.

7 Now, when law enforcement reviewed the devices that
8 were obtained pursuant to the search warrant, particularly
9 this iPhone, they came upon videos that were saved down to the
10 iPhone that appeared to have been video -- screen captures,
11 screen recordings of Snapchat videos that appear to depict a
12 minor in a sexual context. When they found that, law
13 enforcement sought a search warrant for Mr. Lofaro's Snapchat
14 account. The Snapchat return included a set of chats with a
15 purported minor. The chats that Snapchat returned are
16 contained -- or part of the chats that Snapchat returned are
17 contained in Government's Exhibit 4, which is the next exhibit
18 in the packet in front of you, Your Honor.

19 I mentioned these chats in particular because, as I
20 said in front of Judge Fitzpatrick last week, the government
21 is investigating the possibility of an additional charge of
22 production of child pornography. That is based on the chats
23 that are included in Government's Exhibit 4. As you can see,
24 Your Honor, in these chats -- and I'll tell the Court, it's a
25 little confusing, but the way that Snapchat returned this

1 information, it is in reverse chronological order.

2 THE COURT: Okay.

3 MS. HALPER: Not terribly helpful, but if you start
4 at the very last page -- and this is the last exhibit in the
5 packet, anyway. You can see that the chats start with this
6 other user on November 7th of 2021. And the other user,
7 because this other user is a purported minor, the username is
8 redacted from this document.

9 THE COURT: I'm sorry, and in this one JeffG2007 is
10 Mr. Lofaro?

11 MS. HALPER: Correct.

12 THE COURT: Okay.

13 MS. HALPER: On now -- in reverse chronological
14 order, the second page, well, it's three pages, so it's the
15 second page no matter what. But you can see on November 11th
16 and, again, Mr. Lofaro's messages are shaded in blue here. He
17 says, "How old are you? I am 22." The other user responds,
18 "15." He says, "Oh, you are young." You can see in the next
19 column that there are attachments with these chats. The one
20 that is highlighted and in red has been reviewed. And sorry,
21 actually, it should be the next page. But I'll go on to
22 tell -- so as you can see through reading these chats, Your
23 Honor, they engage in -- or Mr. Lofaro engages in a sexual
24 discussion. He talks about sexual acts that it appears he's
25 fantasizing about doing to this purported minor.

1 And then on the first page of this exhibit that has
2 the exhibit marker on it, if you look at 1534 and 33 UTC time
3 on November --

4 THE COURT: 11.

5 MS. HALPER: Yes, thank you. November 11th, after
6 he talks about these sexual acts, he says, "Can you send a pic
7 of your pussy? I want to see what I just came in." The
8 purported minor sends back this attachment. That attachment
9 has been reviewed. It depicts a close-up view of a vagina.
10 You can see in those chats that this purported minor indicates
11 that they live in a foreign country. The government is
12 seeking to interview that individual.

13 Finally, Your Honor, I'll try to just wrap up very
14 quickly here but --

15 THE COURT: Can you just tell me --

16 MS. HALPER: Yes?

17 THE COURT: How have you -- I don't need all the
18 details, but how did they confirm that the video is a minor?

19 MS. HALPER: So it's not a video. It's an image.

20 THE COURT: An image, sorry.

21 MS. HALPER: And it depicts a close-up of a vagina,
22 and that's why, at this point, the government is seeking to
23 have that interview to corroborate that this is who we really
24 think it is and that it shows what we think it shows. But
25 that's why that charge hasn't been added yet.

1 THE COURT: Okay.

2 MS. HALPER: So there's additional investigation
3 that's being done there.

4 THE COURT: And is it also the fact that the
5 responder says 15 is the age?

6 MS. HALPER: Correct. The user says that they are
7 15, yes.

8 THE COURT: Okay.

9 MS. HALPER: And Your Honor can see the Count 3 of
10 the indictment, which charges possession of child pornography,
11 includes -- specifically list out two other electronic
12 devices. It's a MacBook Pro and a MacBook Air laptop. Both
13 of those laptops were, of course, forensically examined, found
14 to contain child pornography. The MacBook Pro contained child
15 pornography videos, specifically. Over 100. The MacBook Air
16 contained a password-protected encrypted archive file. And
17 once forensic examiners were able to figure out the password
18 to decrypt it, to open it, inside they found a MEGA Sync
19 download folder. MEGA Sync is associated with the MEGA
20 application, which is a cloud-based platform that allows for
21 file sharing, essentially, between members and also storage
22 function.

23 Once they were able to open that folder, they found
24 approximately 400 images and more than 70 videos depicting
25 child sexual abuse material, including child sexual abuse of

1 an infant. So, Your Honor, I do have -- those are the facts
2 that I think are important for the Court to know.

3 Again, just moving towards argument, I would say,
4 Your Honor, that this is a presumption case under Title 18,
5 Section 3142(e)(3)(E) because these offenses involve a minor.

6 Beyond that, Your Honor, obviously, there were a
7 tremendous number of electronic devices taken from the home in
8 this case. There is evidence that not only is Mr. Lofaro a
9 collector of electronic devices, uses many of them, but he
10 also took measures to hide and avoid detection for his
11 criminal conduct.

12 The archive file that contained child sexual abuse
13 material was password protected and encrypted. There were
14 multiple chats with other Kik users where he talked about
15 purging to keep things clean.

16 And on that note, I would also tell Your Honor that
17 when he spoke with pretrial, that there was a comment made
18 about -- grab the report here -- that there was a comment --
19 and this is page 3 of 6, the last large paragraph there under
20 "employment history" -- that he mentioned that he had multiple
21 computer Internet-capable devices at his residence, that after
22 his initial appearance, it was suggested that they be
23 surrendered to his attorney. However, he indicated that there
24 were too many to surrender.

25 He is, obviously, someone who uses a tremendous

1 number of these and that is -- presents a risk here and a
2 concern to the government about how he's using these devices.

3 Furthermore, Your Honor, these were not -- this was
4 not a single, discrete instance of receipt or distribution.
5 This was multiple instances of receipt and distribution over
6 the course of at least August of 2021 to February of 2022.
7 During this time period, there was at least one instance in
8 which the government suspects, or is at least investigating, I
9 should say, the possibility that he induced or used a minor to
10 create child abuse material or at least attempted to use a
11 minor to create child abuse material.

12 THE COURT: And that's Exhibit 4?

13 MS. HALPER: Correct.

14 Furthermore, Your Honor, of concern to the
15 government, are the conversations that Mr. Lofaro had with
16 others wherein he discussed his own fantasies about sexually
17 abusing a child, where he discussed other users and their
18 sexual abuse of a child. Not in what is, you know, an effort
19 to gain information, but almost in sort of like a whetting
20 appetite or a goading fashion. That there is -- that that
21 creates some real risks there and some concern. And the fact
22 that there were multiple devices that were positive for child
23 abuse material when they were examined.

24 Based on those things, Your Honor, the government
25 has concern about risks to the community and, therefore, the

1 government is seeking detention pending resolution of this
2 case.

3 THE COURT: Okay. And, Ms. Halper, I think you just
4 said it, but just to confirm, you're moving for detention
5 based on danger to the community, not risk of flight?

6 MS. HALPER: Predominantly on risk to the community,
7 Your Honor. Risk of flight, I would suggest, you know, is
8 probably always a possibility when you're -- when an
9 individual is facing charges of this nature and particularly
10 charges that carry a mandatory minimum.

11 In this instance, pretrial specifically noted that
12 he did have frequent travel. He has contacts abroad,
13 obviously. Though, I believe he turned in his passport to
14 defense counsel, so that ameliorates that concern to some
15 degree. But in candor, as the Court noted, the real thrust of
16 the argument and the concern here is about danger to the
17 community.

18 THE COURT: Okay. Let me ask you a couple more
19 questions.

20 So Mr. Salvato said, I think, there were two
21 searches, and I think you maybe acknowledge that, as well, of
22 his house; is that correct?

23 MS. HALPER: No. So, yes, there were two searches.
24 The first search was of his house. At the time that his home
25 was searched, he was employed with the Naval Research

1 Laboratory. He was stationed in Japan for that job. He was
2 home on some leave at that time, and that's when the search
3 warrant was executed. Because he was home on leave and he had
4 maintained a residence in Japan when that search happened and
5 his employment status, I believe, changed at that point, His
6 belongings in Japan were packaged up and sent back to the
7 Eastern District of Virginia where he was living. The
8 government and law enforcement had reason to believe that he
9 had electronic devices among the stuff that was packaged and
10 sent back from Japan. So when the moving truck with those
11 things on it came back, then a search warrant was executed on
12 the moving truck for electronic devices.

13 THE COURT: And was child pornography found on those
14 devices?

15 MS. HALPER: I don't believe so, Your Honor.

16 THE COURT: Okay. And I think you said there were
17 300 electronic devices that were seized in the May 2022 search
18 of his residence?

19 MS. HALPER: Correct, Your Honor.

20 THE COURT: We talked about the phone, and I think
21 one MacBook. Are there other devices from that 300 that had
22 material on them?

23 MS. HALPER: There were two MacBooks and the iPhone
24 that had child pornography material on them. There were some
25 very old CDs, optical disks, that were removed, I believe

1 from, like a detached garage or a storage shed that had
2 material that was ultimately considered more what we call
3 category 2, or child erotica type material, that was sort of
4 concerning but not -- not clearly child pornography. So there
5 were a couple of electronic devices that fell into that
6 category, but in short, the three devices that I've discussed
7 today are the three devices that contained child pornography.

8 THE COURT: Okay. So when you say 300 electronic
9 devices, includes things like CDs?

10 MS. HALPER: Yes.

11 THE COURT: Okay. Okay. All right. I may have
12 more questions as we go along, but that's it for now. Thank
13 you.

14 MS. HALPER: Thank you.

15 MR. SALVATO: Thank you, Your Honor. Your Honor, in
16 terms of just a couple of things that the government said.
17 Obviously, I don't have an agent here to cross-examine on some
18 of the representations that the government made in terms of
19 its proffer. Obviously, we have not received any discovery in
20 the case, so there is a tough situation to refute some of the
21 allegations that the government has put forth in these
22 exhibits. These exhibits were given to us today, Your Honor,
23 probably about ten minutes before the hearing started. So we
24 haven't had an opportunity to review them independently or
25 with Mr. Lofaro.

1 I will start with this mention, kind of, where the
2 government left off on this mention of this Snapchat with this
3 purported minor. Your Honor, I can tell the Court that that
4 argument or those factual allegations were put forth before
5 Judge Fitzpatrick, as well, last week, and he still decided
6 that Mr. Lofaro should be released. And Mr. Lofaro has
7 actually returned. We don't know at this point, Your Honor,
8 that person actually exists, whether that person is a male,
9 whether that person is an overage female, whether that person
10 is an underage minor. There's no way to tell who that user
11 was. What was represented to Judge Fitzpatrick, and what
12 seems to be represented to this Court, is that there are --
13 there is an unknown person overseas who apparently sent a
14 picture of female genitalia. Obviously, Mr. Lofaro hasn't
15 been charged with that offense. We don't know, again, if
16 that's an adult, a male, or a minor female. We have no idea.

17 Also, in that chat, it looks like -- and again, it's
18 hard to read, but at some point, Mr. Lofaro -- or somewhere in
19 that chat back and forth, there's an indication of, you look
20 23, or something along those lines. So again, Your Honor,
21 that charge has not been brought. He hasn't been indicted
22 with that. We don't know the basis of that charge. That's
23 some unknown person in a foreign country. So I would take
24 that for what it's worth, and I think Judge Fitzpatrick saw
25 that for what it's worth.

1 Your Honor, the second thing I would say in terms of
2 the government's proffer, is that we haven't reviewed any of
3 these images. We haven't participated in any discovery. We
4 don't know what the forensics look like in terms of
5 evaluation, whether the government can tie Mr. Lofaro himself
6 to those chats or how that exactly happens. So we're at a
7 little bit of a disadvantage because we haven't, obviously,
8 undergone the investigation and the discovery in this case.

9 It looks like, Your Honor, from reading between the
10 lines of what the government said, is that any allegation,
11 kind of, ends in November or February of 2022. So you got
12 quite some period. Apparently, he was overseas. There were
13 some -- a secondary search done. There was no child
14 pornography involved in that secondary search. So it seems
15 like, even giving the government the absolute benefit of the
16 doubt -- which I don't think we can at this point because he's
17 presumed innocent. We haven't seen the discovery -- that any
18 alleged participation ended, in terms of the search, in 2022
19 after he retained counsel.

20 It also appears as if from the government's proffer,
21 that Mr. Lofaro never went out to meet a minor, tried to
22 solicit a minor. There's no actual contact with a minor in
23 any way, shape, or form. These looks like, at worst, Kik
24 chats back and forth with other people that are in groups.
25 And I don't know if those groups generated the material in

1 question, whether Mr. Lofaro did. Again, that's an open
2 question, because we haven't reviewed anything. But it seems
3 like there's been no contact between Mr. Lofaro and any minor
4 whatsoever in this case, which I think is important in terms
5 of the government's argument about danger to the community.

6 Your Honor, in terms of the pretrial report, which
7 I'm sure the Court has reviewed, Mr. Lofaro stands before the
8 Court 39 years old. He has no record whatsoever and a solid
9 family and employment history. As the government indicated,
10 he was employed with the Naval Research department or
11 laboratory for a good period of time, had no issues there.
12 Mr. Sprano and I have been involved with that organization in
13 terms of his employment, benefits and, sort of, as -- as he
14 was, kind of, left that employment.

15 He has been employed full-time as a programmer for
16 Hanson Robotics since March of this year, 2023, which has a
17 local office in Sterling, Virginia. His wife -- they've been
18 married for ten years now. His wife, Ms. Yang, also known as
19 Nat, is here. They don't have any children from the union so,
20 kind of, these talks, these fantasy talks about, oh, I have a
21 child or something like that, that seems to be just fantasy
22 talk at worst, or puffery, or whatever we want to call it.
23 But they have no children. They've been married for the past
24 ten years. They reside in Ballston, Virginia. And as I
25 indicated to the Court, his wife is here.

1 His wife is employed. She's a permanent resident.
2 Pretrial services did the research on her. She's been in the
3 Northern Virginia area since 2015. And she's indicated that
4 Mr. Lofaro is permitted, even after hearing everything that
5 the government said today and the other day in front of Judge
6 Fitzpatrick, that she is willing to serve as his third-party
7 custodian. She advised that she would permit the institute --
8 the installation of location monitoring, which Mr. Lofaro has
9 had since he was released by Judge Fitzpatrick, and I think
10 she's an appropriate third-party custodian.

11 His mom is also here. She came down from
12 Pennsylvania. She's also been interviewed as an appropriate
13 third-party custodian. They live in Ardmore, Pennsylvania.
14 So the Court, kind of, has two options in terms of the
15 third-party custodian. We would ask that he be allowed to
16 return to his house, be able to work remotely. He, of course,
17 agrees to the condition noted by pretrial of computer
18 monitoring of any system that he is using.

19 Your Honor, the couple last things that the
20 government mentioned, I think on page 3 of 6, they said that
21 the defendant indicated there were too many to surrender and
22 instead opted to stay with his mother in Pennsylvania during
23 his temporary release. We were in a very tight situation
24 because he was trying to get to Pennsylvania for his dad's
25 funeral. It's 3:30 in the afternoon. It was a situation

1 where he wasn't going to be able to get everything out. We
2 came to an agreement with pretrial and the Marshals that he
3 would simply just go to Pennsylvania, and we would deal with
4 that issue later.

5 Mr. Lofaro, I can tell the Court, certainly consents
6 to any computer monitoring and the removal of any items,
7 working that out with pretrial, that are not necessary for his
8 employment.

9 Your Honor, pretrial has considered the danger
10 situation. They have considered the flight risk situation,
11 and they've submitted conditions to the Court which we believe
12 are completely appropriate in this case. This is clearly a
13 release case in our opinion, and especially, Your Honor, this
14 case has been pending for 15, 18 months.

15 Mr. Lofaro reached out to us immediately. If he was
16 going to go anywhere, he would certainly have gone, but he's
17 here with retained counsel. He's had retained counsel, and I
18 can tell the Court he has been in touch with us constantly
19 over the past 15 months. If there was any desire for him to
20 leave, contact a minor, do anything that was dangerous, or
21 that would show a flight risk, that would have been done over
22 the past 15 months. He has counsel. He has had counsel. The
23 government was aware that he had counsel.

24 We haven't seen any of these exhibits or any of
25 these proffers until actually today. Mr. Lofaro is ready to

1 defend these charges, and we're ready to represent him. It's
2 clearly a release case, and we'd ask the Court to release him.

3 THE COURT: Mr. Salvato, just a couple of questions.
4 Did Mr. Lofaro have a security clearance with the naval job?

5 MR. SALVATO: He did.

6 THE COURT: He did. Do you know what level?

7 MR. SALVATO: It's S.

8 THE COURT: S, secret? Okay. And I, too, took note
9 of the statement on page 3 of 6 of the pretrial services
10 report that there are too many devices in the home to
11 surrender. I understand your point about the tight timeline
12 on Friday. How many devices are we talking about -- a
13 two-part question. How many devices are we talking about, and
14 how many are actually necessary for employment?

15 MR. SALVATO: We've talked about that before court,
16 Your Honor. I would say he has a number of devices. I can
17 ask Mr. Lofaro the exact number, but what we would propose --
18 and we worked with pretrial in these types of issues before,
19 is he will have one computer which operates on a Window [sic]
20 10 or Windows 11, or whatever the -- whatever pretrial can
21 monitor. That has been, in my experience, completely
22 consistent with their monitoring devices or software.
23 Everything else will be removed, other than that one computer
24 that can be monitored. So we can remove any and all devices
25 to the satisfaction of pretrial. Other than that one which,

1 it's now Linux, he will convert it to Windows 10 or 11 or have
2 someone convert it to Windows 10 or 11, and then that computer
3 can be monitored safely by pretrial. But we will remove
4 anything and everything else that's not connected to that one
5 computer so that he's able to work remotely.

6 THE COURT: So he wouldn't need a phone?

7 MR. SALVATO: Not a phone that's connected to the
8 Internet. What I've done before, I had a case that would
9 actually -- involved some contact with minors in front of
10 Judge Nachmanoff when he was a magistrate judge, and Judge
11 Nachmanoff allowed a flip phone with no Internet capability.
12 That would be fine with us. Obviously, he needs to get in
13 touch with us. It would be helpful if he was locally
14 monitored and supervised versus in Pennsylvania, which are,
15 kind of, the two options for the Court. But if he's local, it
16 makes it easy for him to use his flip phone to contact us and
17 vice versa as we go through this.

18 THE COURT: Sorry to interrupt you. Would you take
19 possession of the devices?

20 MR. SPRANO: Your Honor, I was at the house on
21 Friday. It's -- so when you walk in, it's almost like a --
22 kind of, a lab, if you will. A lot of the devices appear to
23 be robotics components, so they're not things that would
24 independently be accessing the Internet. So it was too much
25 for me, because he, kind of, works out of his home, so I

1 couldn't have fit it in my vehicle at that time or wouldn't
2 have known what to do with it. But we talked about if
3 pretrial doesn't -- if they are not comfortable with what he
4 has there, they can rent a storage space and only either we
5 would have access to it or his wife would have access to it.
6 But that's the gist of it is, it's not like he has a bunch of
7 different, you know, I guess a server farm or anything like
8 that. A lot of it is just, kind of, bits and pieces of his
9 robotics.

10 THE COURT: Okay. Yeah. I don't want to put the
11 burden on pretrial to figure out how to -- what to take and
12 how to keep it. To the extent I release him, and this is one
13 of my concerns, and so, I want to have that -- you-all figure
14 that out and maintain custody of it.

15 And then, to the extent -- I know his wife said, I
16 think in a pretrial services report I saw, that she removed a
17 laptop from the home, so the only device in the home would
18 be -- your proposal is the computer he needs for work?

19 MR. SALVATO: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. SALVATO: We have his passport.

22 THE WITNESS: Yeah, passport.

23 MR. SALVATO: (Not at the mic and indiscernible.)

24 THE COURT: Okay. And then working remotely
25 sometimes you're -- is the computer provided by the company?

1 Is there any use of company devices?

2 THE DEFENDANT: No. (Not at the mic and
3 indiscernible.) That's my personal computer. My company
4 computer is at work (Not at the mic and indiscernible.) Based
5 in Hong Kong which is and one with (Not at the mic and
6 indiscernible.) I work remotely for both of them. And that
7 computer's at work, so I was using the personal one.

8 THE COURT: Your personal one. Okay. And do you go
9 to the office in Sterling where there is?

10 THE DEFENDANT: I don't need to. That's a part-time
11 one, about 30 hours a week. (Not at the mic and
12 indiscernible.) And I normally work remotely.

13 THE COURT: Okay. And that's the part-time one?
14 And the one that's based in Hong Kong, is there a local office
15 that you go to as well?

16 THE DEFENDANT: (Not at the mic and indiscernible.)

17 THE COURT: Okay. Thank you.

18 MS. HALPER: Your Honor, I don't mean to interrupt.

19 THE COURT: Yes.

20 MS. HALPER: Two points of clarification. One,
21 Mr. Salvato did remind me to correct me. I mentioned earlier
22 that the government had emailed on Thursday of last week to
23 get in touch but didn't hear back until Friday. Mr. Salvato
24 did email me back that night and said that he would call me
25 the next day. So to correct the record there.

1 The other thing is in his -- in his statement to the
2 Court, Mr. Salvato mentioned that he didn't have a witness
3 here. I just wanted to be clear that Special Agent Coonheim
4 (ph) from NCIS is present in court. So the proffer that I
5 gave to Your Honor is what I expect she would have testified
6 to had she testified. If the Court or counsel has questions
7 based on that, she is present today. I just don't want it to
8 appear that I've hidden a witness in plain sight.

9 THE COURT: Thank you for the clarification and for
10 having her present.

11 MS. HALPER: Thank you. Just very briefly, Your
12 Honor. Beyond that, obviously, the computer monitoring
13 software is something that the Court uses and pretrial uses to
14 ensure compliance with the conditions of release, and I think
15 that software is likely very good. The concern, though, is
16 about electronic devices that are held surreptitiously that
17 wouldn't, obviously, because of their nature being
18 surreptitious, would not be subject to the monitoring.

19 This is an individual who has collected a
20 substantial number of electronic devices. He works, as he has
21 said, in IT, in robotics. He has a sophisticated knowledge
22 and understanding of electronics. And that's the government's
23 concern that there could be electronics that the government
24 doesn't know about. That's not a baseless concern, I would
25 argue to Your Honor. There is evidence in this case of

1 attempts to hide and conceal.

2 I would also note to Your Honor that while all of
3 this was happening, he was married to and living with his
4 spouse. The same spouse that they have offered and suggested
5 would be a suitable third-party custodian. There's nothing
6 about her that gives the government pause, necessarily, about
7 her fitness to be a third-party custodian, but the fact that
8 she was married to him, living with him, all while he was
9 in -- doing these things, does give the government concern,
10 Your Honor.

11 And so, I just would like the Court to know that.

12 THE COURT: Thank you. I appreciate those concerns.
13 So what I'm charged with doing, as everybody I think knows, is
14 determining whether there is a set of conditions that would
15 reasonably assure the safety of the community. Ms. Halper, I
16 take your point that we don't have the perfect -- we don't
17 necessarily have a perfect system, but reasonably, I have to
18 be reasonably assured that the safety of the community will
19 be -- and any other person, will be protected if I release
20 somebody pretrial. You know, on the facts here, I think this
21 is a release case, but with conditions that are fairly
22 stringent. And I'm going to add -- I'm going to tweak a
23 couple of the conditions that pretrial has suggested.

24 Let me preface what I'm about to say with this,
25 which is that my decision to release Mr. Lofaro in no way

1 condones any of the conduct alleged, including what is in
2 these exhibits, and I'm sure you have many more of them. They
3 are concerning, the conduct here is -- is -- these cases are
4 always concerning. I do find it persuasive, however, that we
5 don't actually know that the one communication -- at least
6 that I've been presented, and apparently Judge Fitzpatrick was
7 presented, about a potential communication with a minor is, in
8 fact, a minor, and that communication was quite a while ago.
9 The government executed these search warrants in 2022 and has
10 known about this conduct for some time, so they allowed
11 Mr. Lofaro to remain, you know, unindicted and out when
12 obviously, I think there was probably evidence to, at least
13 arrest him quite a while ago. So the passage of time and the
14 fact that the -- the one instance was either communicating or
15 attempting to communicate with a potential minor is a -- quite
16 a while ago, I think more than two years ago and not -- not
17 confirmed to be a minor are persuasive for me in this
18 instance.

19 So, I am going to release Mr. Lofaro on the
20 following conditions -- and Ms. Halper as I go along, if there
21 are other conditions you'd like me to consider, please let me
22 know. But...

23 So Mr. Lofaro is going to report to pretrial
24 services and be supervised by them. He's going to be released
25 to the custody of his wife and not move from their residence

1 without prior approval of pretrial services or the Court. He
2 must refrain from any contact with coconspirators, to the
3 extent there are any in this case, potential witnesses, or
4 victims related to the instant offense -- instant offense,
5 unless in the presence of counsel. He must submit to
6 substance abuse testing and treatment, as directed by pretrial
7 services.

8 I understand he's already surrendered his passport
9 to defense counsel, but I'm directing that he also not obtain
10 a new passport or any other international travel documents.
11 His travel will be restricted to the Eastern District of
12 Virginia and the Greater Washington, D.C. metropolitan area.
13 Any and all other travel must be pre-approved in advance by
14 pretrial services or the Court. Mr. Lofaro must refrain from
15 having any contact with minors under the age of 18 unless
16 another adult is present who has been pre-approved in advance
17 by pretrial services.

18 All right. I want to talk about the devices. We
19 talked about this a little bit. So I am concerned about the
20 access to so many devices, and I understand the government is
21 as well. I think the solution that Mr. Salvato has proposed
22 makes sense. So, Mr. Lofaro, you need to refrain from
23 possessing or having access to a computer or the Internet
24 unless the computer monitoring program has been installed by
25 pretrial services. You must consent to the installation of

1 computer monitoring software and any computer to which you
2 have access.

3 Installation must be performed by pretrial services,
4 and the software may restrict and/or record any and all
5 activity on the computer, including the capture of keystrokes,
6 application information, Internet use history, email
7 correspondence, and chat conversations. You may not remove,
8 tamper with, reverse engineer, or in anyway circumvent the
9 software. And the cost of the monitoring will be paid by you.
10 You must also refrain from possessing or utilizing any video
11 gaming system and consoles, phones with Internet capabilities,
12 or any such devices, which would enable contact and/or sharing
13 data with -- of data with other individuals known or unknown
14 to you.

15 I'm also going to require, consistent with the
16 discussion on the record, that all devices be removed and put
17 into the custody of defense counsel, to which Mr. Lofaro has
18 no access. So whatever he needs, it sounds like one computer
19 for work and a flip phone that doesn't have Internet access,
20 and his wife's computer, I understand, has already been
21 removed. If, for some reason, she has a device in the home,
22 it needs to be password protected so that Mr. Lofaro does not
23 have access.

24 I am also going to require that Mr. Lofaro inform
25 his employer that he's not allowed to have access to

1 Internet-capable devices, but if he does go to a local office,
2 that they don't inadvertently provide him access to an
3 Internet-capable computer.

4 Submit to and pay for sex offender evaluation and/or
5 treatment conducted by a certified sex offender treatment
6 provider as directed by the supervising officer and sign all
7 appropriate release forms. Refrain from possessing or having
8 any access to firearms, destructive devices, or other
9 dangerous weapons as directed by pretrial services. And I
10 understand that the firearms are currently and will remain in
11 the possession of defense counsel.

12 Defendant shall submit to home detention on the
13 location monitoring technology, which has already been
14 installed.

15 So what I'm going to do is have pretrial services
16 install whatever they need to at Mr. Lofaro's home. I don't
17 know if there's any -- anything else that needs to be
18 installed for home detention. And Mr. Lofaro, you have to
19 abide by all of the GPS and home detention requirements.
20 You'll be restricted to your residence at all times except for
21 employment, education, religious services, treatment, attorney
22 visits, court appearances, court-ordered obligations, or any
23 other activities that must be pre-approved by your supervising
24 officer.

25 Ms. Halper, any additional conditions you'd like the

1 Court to consider adding?

2 MS. HALPER: No, Your Honor.

3 THE COURT: Okay. Mr. Salvato, any questions or
4 clarifications that you need from the Court?

5 MR. SALVATO: No, Your Honor. I appreciate the
6 Court's consideration. I believe the arraignment is set for
7 next Wednesday in front of Judge Alston. I believe that's a
8 good date for everyone. I need to check with Mr. Sprano
9 before I talk too quickly, but Mr. Lofaro's next court date
10 for inclusion in the order of -- will be next Wednesday.

11 THE COURT: Yes. I have it as the 18th at 11:00.
12 Okay. And we will put that.

13 So, Mr. Lofaro, you must appear at all court
14 appearances, and your next current scheduled appointment, a
15 court appearance, is October 18th at 11:00 a.m. I'm going to
16 direct that you go down immediately to pretrial services and
17 wait for the order to be prepared, and then review it and sign
18 it, and then go to pretrial services and get everything worked
19 out.

20 I would like, Mr. Sprano, for you to take possession
21 of the devices as quickly as possible. And to let pretrial
22 services know that you have everything, other than the one
23 computer that we've agreed on and whatever the flip phone
24 situation is going to be. Okay?

25 MR. SPRANO: Yes, Your Honor. Can I just have just

1 a clarification question? Because of the definition of what
2 kind of device could be very broad in terms of anything that
3 you plug in or has a battery. What I understand is it would
4 be anything that has data storage or Internet capability.

5 THE COURT: Yes.

6 MR. SPRANO: Just like a robotic arm that's not
7 connected -- I mean -- there's just a lot of stuff that's all.

8 THE COURT: So my concern would be anything that
9 could be -- that is or could be connected to the Internet
10 with -- I mean I understand Mr. Lofaro has some IT
11 capabilities. So anything that has the possibility of even
12 being altered to be connected to the Internet, I want it out
13 and with you.

14 MR. SALVATO: Understood, Your Honor.

15 THE COURT: But if it's something like a robotic arm
16 that doesn't have the ability to store things or Internet,
17 then, from my perspective, you don't need to take that out.

18 Ms. Halper, do you have a -- any concern about
19 things that don't have an Internet capability?

20 MS. HALPER: I think Mr. Sprano mentioned also
21 anything that has -- capable of data and storage.

22 THE COURT: Yes.

23 MS. HALPER: Your Honor, I just say -- I appreciate
24 the Court taking the time to consider this case and to fashion
25 these conditions, these strict conditions. I will tell the

1 Court that in considering the possible outcomes today for this
2 case, I did talk with a supervisor about, if this was one of
3 the outcomes, whether or not the government would seek to stay
4 the order and appeal, and I have been given approval to do
5 that, so I just want to respectfully do that now. I
6 appreciate that the Court took a lot of time to set out those
7 conditions, but the government, at this point, is going to
8 appeal. I will let chambers, Judge Alston's chambers know
9 that if the Court is willing to stay that -- stay this order
10 and see if that appeal can be taken up as quickly as possible,
11 but as late as Wednesday, next week since we already have that
12 court date.

13 THE COURT: Okay. The problem is he's already out.
14 So, I mean -- it's a wrinkle. So I -- I'm willing to stay my
15 order until Friday at noon, but I don't -- he's already on
16 release, so.

17 MS. HALPER: And it's --

18 THE COURT: I don't know that you wanted me to
19 stay putting all these -- all these protections in place.

20 MS. HALPER: I don't want to stay putting any
21 protections in place, Your Honor, if it's the Court's
22 interpretation that he would remain on release. My
23 understanding in all -- I guess I would have to look more
24 closely at it -- but the temporary release order entered by
25 Judge Fitzpatrick last week was temporary release until now.

1 So I guess it is my interpretation that that temporary release
2 is expired, I guess at this point, as of 2:00 p.m. So I think
3 that, if I'm asking you to stay the order and you agree to
4 stay the order, Your Honor, that he would then need to be
5 remanded until the detention hearing was heard by Judge
6 Alston. But I agree it's an awkward posture.

7 THE COURT: Yeah. Okay.

8 MR. SALVATO: I don't think there's any basis to
9 stay the order, Your Honor. I think the Court's, Judge
10 Fitzpatrick's, reasoning was sound. The Court's reasoning was
11 sound. If the government wants to deal with that next
12 Wednesday, they can file an appropriate motion, but there's no
13 reason to stay the Court's release order. There's not a
14 probability of success given no record, and he's been out for
15 15, 18 months.

16 THE COURT: So, Ms. Halper, I think, just based on
17 where we are procedurally, if you want to appeal, obviously,
18 you're free to do that, but I'm not going to stay my order
19 because I think it actually adds more protection than what he
20 would be currently out on. So I'm going to go forward with my
21 order. And if you want to appeal it and have -- ask Judge
22 Alston to stay it and remand and you can do that.

23 MS. HALPER: Understood. Okay. Thank you, Your
24 Honor.

25 THE COURT: Yep. Thank you. Okay. Is there

1 anything else?

2 MS. HALPER: Your Honor, only -- in your order, did
3 Your Honor include the no-contact provision with witnesses,
4 potential witnesses.

5 THE COURT: I did. If I didn't say it out loud, I
6 meant to, but I think I read it, yeah. No coconspirators and
7 witnesses, and victims.

8 MS. HALPER: Yes. Thank you.

9 THE COURT: Okay. Anything else?

10 MR. SALVATO: No, Judge.

11 THE COURT: Okay. Well, we will -- you-all go down
12 to pretrial services, and we will work on the order here
13 promptly. Thank you. We're adjourned.

14 MR. SALVATO: Thank you, Your Honor.

15 **(Proceedings adjourned at 3:11 p.m.)**

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CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported from the Court's FTR recording, in my official capacity, the proceedings had and testimony adduced upon the Detention hearing in the case of the **UNITED STATES OF AMERICA versus DANIEL MARC LOFARO** Criminal Action No.: 1:23-cr-156, in said court on the 11th day of October, 2023.

I further certify that the foregoing 44 pages constitute the official transcript of said proceedings.

In witness whereof, I have hereto subscribed my name, this October 19, 2023.



Tonia M. Harris, RPR
Official Court Reporter